

## Reversal of the Burden of Proof in Money Laundering: A Legal Economic and Business Ethics Perspective

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### Abstract

**Background** – Corruption money laundering undermines law enforcement, the economy and business. The practice distorts markets, competes unfairly and contradicts the Islamic and traditional economic ethics.

**Objective** – This paper discusses the reversal of burden of proof in corruption related money laundering charges from the perspective of legal economics, business ethics and Islamic business ethics.

**Method** – The normative, legislative and conceptual methods are used in this research. Qualitative legal interpretation is concerned with laws, legal notions and academic articles.

**Results** – Reversing the burden of proof is an effective legal tool for detecting illicit assets and for enabling law enforcement in money laundering cases. From a legal economic perspective, this mechanism contributes to reducing information asymmetry, enhancing transparency and avoiding market distortions. From a business ethics perspective, it encourages accountability and helps prevent unethical financial practices. Furthermore, money laundering is against the values of honesty (*ṣidq*), trustworthiness (*amānah*) and justice (*‘adl*) in Islamic business ethics, which justifies the case for more stringent legal enforcement.

**Implication/Contribution** – This study contributes by integrating criminal law analysis with legal economic and ethical perspectives, particularly Islamic business ethics, thus offering a more comprehensive approach to combating money laundering and strengthening ethical economic systems.

Keywords; Money Laundering; Corruption; Reversal Of The Burden; Ethics



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## **INTRODUCTION**

Corruption constitutes a serious crime that threatens not only legal order but also economic stability and business integrity. Under Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Corruption Crimes, any act that unlawfully enriches oneself and causes losses to the state can be prosecuted as a criminal offense. In practice, corruption is often followed by money laundering activities, as perpetrators attempt to conceal and legitimize illicit assets through various financial transactions. (Sitompul, 2023, p. 111)

Money laundering, as regulated under Law Number 8 of 2010 (Sitompul, 2023, p. 116) on the Prevention and Eradication of Money Laundering Crimes, enables illegal wealth derived from corruption to be reintroduced into the formal economic system. This phenomenon not only complicates law enforcement but also distorts market mechanisms and undermines ethical business practices (Isolauri & Ameer, 2022; Sagatsume et al., 2016).

In 2022, based on data collected by Indonesia Corruption Watch (ICW), a total of 579 corruption cases were handled by law enforcement agencies throughout the year 2022. Furthermore, 1,396 individuals from various professional backgrounds have been identified as suspects. This figure represents an increase compared to the previous year; specifically, in 2021, there were 533 cases (Rahman & Lituhayu, 2024).

The proliferation of corruption cases has inevitably led to an escalation in the financial losses incurred by the state, as evidenced by ICW data indicating that in 2022, the potential financial loss to the state due to corruption cases amounted to IDR 42,747,547,825,049 (IDR 47.747 trillion), the potential value of bribery and gratification reached approximately IDR 693,356,412,284 (IDR 693 billion), the potential value of extortion or coercion amounted to about IDR 11,926,507,750 (IDR 11.9 billion), and the potential value of money laundering was estimated at around IDR 955,980,000,000 (IDR 955 billion). These substantial financial impacts underscore the sophisticated

and pervasive nature of economic crimes, which often involve intricate schemes to obscure the origins of illicit gains (Puanandini et al., 2023; Wibowo, 2018; Data Indonesia : “ICW: Penindakan Kasus Korupsi Meningkat pada 2022,” n.d.)

Data from Indonesia Corruption Watch (ICW) indicates a significant increase in corruption cases in recent years, which consequently contributes to the rise of money laundering activities.(Djumaifin et al., 2025) Such practices enable perpetrators to conceal illicit wealth and reintroduce it into the formal economy, thereby legitimizing unlawful gains. From a legal economic perspective, this phenomenon leads to inefficiency, asymmetry of information, and market distortion.

In addition, from a business ethics perspective, money laundering represents a violation of fundamental ethical principles such as honesty, accountability, and fairness. In the context of Islamic economic thought (Sumadi, 2017, p. 186), these practices clearly contradict the principles of *ṣidq* (honesty), *amānah* (trustworthiness), and *‘adl* (justice), as well as the prohibition of unlawful (*ḥarām*) wealth acquisition.

One of the legal mechanisms introduced to address money laundering is the reversal of the burden of proof, as regulated in Law Number 8 of 2010. This mechanism shifts part of the evidentiary burden to the defendant, particularly in explaining the legitimacy of their assets. While this concept raises debates in criminal law, it also offers significant implications from legal economic and ethical perspectives.(Akbar, 2019, p. 169)

In light of the unique characteristics of the crime of money laundering, the role of law enforcement agencies is pivotal in addressing this criminal offense. This is primarily because, to establish the crime of money laundering, it necessitates the proof of a prior underlying offense, thereby requiring proof of two criminal elements in a single trial. This intricacy in handling the offense renders it exceedingly challenging. The complexity of money laundering crimes in contemporary times, extending beyond jurisdictional boundaries

and involving perpetrators employing increasingly diverse methods, including institutions beyond the established financial system that have permeated various sectors, further exacerbates the issue.(Simanjutak & Kostruba, 2023, p. 41)

Strengthening the Anti-Money Laundering Act represents one of the measures that must be undertaken to combat money laundering offenses. Through the implementation of a reversed burden of proof system, it is hoped that this measure will prove capable, or at the very least, effective, in ensnaring perpetrators of this crime.(Nugroho, 2018, p. 181)

Although the reversal of the burden of proof is considered an effective mechanism in addressing money laundering crimes, its application raises fundamental legal concerns, particularly in relation to the principle of presumption of innocence. In classical criminal law, (Langlois, 2013, p. 32; Zainal et al., 2019) the burden of proof lies entirely with the prosecutor, and any deviation from this principle must be strictly justified.

The implementation of the reversed burden of proof in money laundering cases potentially creates a tension between efficiency in law enforcement and the protection of individual rights. (Fernandho, 2020, p. 2) If applied without clear limitations, this mechanism risks placing the defendant in a structurally disadvantaged position, where failure to prove the legality of assets may lead to implicit assumptions of guilt.

Therefore, the application of this mechanism should not be interpreted as an absolute transfer of the burden of proof, but rather as a balanced and limited evidentiary system. The prosecutor must still bear the primary obligation to prove the elements of the crime, while the defendant's obligation should be confined to clarifying the origin of assets. This balance is essential to ensure that the legal system does not sacrifice justice in pursuit of efficiency.(Chinonso, 2024; Singh, 2025)

From a legal economic perspective, the reversal of the burden of proof can be justified as a mechanism to reduce enforcement costs and address

information asymmetry. However, its effectiveness depends on proportional implementation. (Spottswood, 2021) Excessive reliance on this mechanism may create legal uncertainty, which in turn can negatively affect investment climate and economic stability.

In a well-functioning economic system, legal certainty is a fundamental requirement. If the burden of proof is perceived as unfairly shifted to individuals without adequate safeguards, it may discourage legitimate economic actors and create a chilling effect on business activities. Thus, while the mechanism enhances efficiency in detecting illicit assets, it must be accompanied by clear procedural standards to maintain trust in the legal and economic system. (Bikelis, 2020, p. 26) From a business ethics standpoint, the reversal of the burden of proof reflects a shift from reactive law enforcement to preventive ethical governance. However, ethical concerns arise when legal mechanisms are perceived as coercive rather than corrective.

Ethical business practices are built on voluntary compliance, integrity, and trust. If the legal system relies excessively on coercive mechanisms, it may undermine the internalization of ethical values within business actors. Therefore, the reversal of the burden of proof should be positioned not merely as a punitive tool, but as part of a broader ethical framework that promotes transparency, accountability, and responsible economic behavior. (Babalola et al., 2022, p. 911; Rahayu et al., 2026)

In Islamic legal thought, the principle of justice (*'adl*) requires that no individual be burdened beyond their capacity or placed in an unjust position. While the reversal of the burden of proof can be aligned with the objective of protecting wealth (*ḥifẓ al-māl*), its application must still uphold fairness and avoid potential *zhalim* (injustice).

Islamic jurisprudence emphasizes the importance of clear evidence (*bayyinah*) and rejects assumptions that may harm individuals without sufficient proof. (Riady et al., 2025) Therefore, the legitimacy of the reversed burden of proof within an Islamic framework depends on its proportional and

limited application. It must function as a complementary mechanism rather than replacing the fundamental obligation of proof borne by the prosecutor. This perspective highlights that the pursuit of economic justice must be balanced with procedural justice, ensuring that efforts to combat money laundering do not contradict the ethical and legal principles they aim to uphold.

Analysis indicates that shifting the burden of proof is both proportional and ethical. The criminal law pertaining to intricate economic offenses, such as money laundering, is augmented. (Fernandho, 2020, p. 2) To ensure effective law enforcement and the protection of justice, it is imperative to equilibrate legal certainty, economic efficiency, and ethical considerations.

Several studies on money laundering and the reversal of the burden of proof have focused on the cooperation in criminal law and the efficacy of law enforcement. These studies analyze doctrinal disputes such as the burden of proof versus the presumption of falsehood and their application in Indonesian statutory law. (Mulyadi, 2015, p. 102; Prayitno et al., 2025)

However, limited attention has been given to examining this mechanism from an interdisciplinary perspective that integrates legal economics and business ethics. In particular, there is a lack of analysis on how the reversal of the burden of proof contributes to economic efficiency, market integrity, and ethical business conduct. Furthermore, existing studies rarely explore this issue within the framework of Islamic business ethics, especially in relation to principles such as honesty (*ṣidq*), trustworthiness (*amānah*), and justice (*‘adl*). (Hartika et al., 2025)

Therefore, this study seeks to fill this gap by offering a comprehensive analysis that connects criminal law, (Sumiadi et al., 2025) legal economic perspectives, and business ethics, including Islamic ethical principles, in understanding the role of the reversal of the burden of proof in money laundering cases. Therefore, this study aims to analyze the application of the reversal of the burden of proof in money laundering crimes derived from

corruption and to examine its role in supporting economic integrity (Azizah et al., 2023) and ethical business practices, including within the framework of business ethics.

## **METHOD**

This study employs a normative juridical research method with statutory and conceptual approaches. It focuses on evaluating and interpreting legal norms and principles, emphasising the moral and ethical dimensions of law. (Hadi et al., 2025, p. 385) The statutory approach is used to analyze relevant legal frameworks and norms, (Hana et al., 2025) particularly Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes, while the conceptual approach is used to examine theories of legal economics and business ethics, including Islamic business ethics principles.

The data used in this study consist of secondary legal materials, including legislation, academic literature, (Dewi et al., 2018, p. 325) and scholarly journal articles related to money laundering, legal economics, and ethical frameworks. Data collection is conducted through document analysis, and the data are analyzed qualitatively (Buku Ajar Metode Penelitian & Penulisan Hukum, n.d.) using legal interpretation and analytical reasoning.

By integrating legal, economic, and ethical perspectives, this study aims to provide a more comprehensive understanding of the reversal of the burden of proof in the context of money laundering crimes.

## **RESULT AND DISCUSSION**

### **Application of Reverse Evidence in the Crime of Money Laundering**

The principle of reversing the burden of proof is carried out to facilitate proof in specific cases, such as bribery or gratification. Initially, reversing the burden of proof was only used by countries that had an Anglo-Saxon legal system. However, currently, it is deemed necessary for Indonesia to regulate

the principle of reversing the burden of proof in the Law on the Eradication of Money Laundering Crimes and the Law on the Eradication of Corruption Crimes.

In Dutch, the reverse proof is known as “*omkering van het bewijslast*” or, in English, shifting the burden of proof. For this reason, Andi Hamzah stated that the reverse evidence applied in Indonesia is not appropriate; according to him, this is a deviation from the general principle of criminal law, namely the presumption of innocence. Meanwhile, in reverse evidence, the defendant must prove that he is innocent; if he cannot prove it, then he is considered guilty. He considers the reverse evidence to have placed the defendant in a guilty position.

During the discussion of the Draft Law on the Eradication of Corruption Crimes in the 1970s, the idea was about reversing the burden of proof on the defendant regarding his assets (*omkering van bewijslast* or shifting the burden of proof). (Suwono & Hafidz, 2018, p. 777) However, at that time, there was some debate because the reverse burden of proof potentially contradicted and violated human rights principles, especially the protection and respect for the rights of the accused. Therefore, the application of this principle cannot be conducted totally and absolutely; initially, the burden of proof remains on the public prosecutor. However, with the existence of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, the burden of proof can be placed on the defendant.

In the provisions of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, the defendant is obliged to prove that the assets he owns are not the proceeds of a criminal act. In this regard, it is stated in Article 78 paragraph (1) of Law number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering that in the examination process during the trial, as intended in Article 77, the judge can order the defendant to prove that the related assets are in cases that do not originate from or are related to criminal acts, as intended in Article 2 paragraph (1) (Endraswari, 2016, p. 399)

Furthermore, Article 78 paragraph (2) explains that the defendant must prove the assets related to the proceeds of a criminal act as intended in Article 2 paragraph (1) by presenting two sufficient pieces of evidence. However, if the defendant cannot provide two sufficient pieces of evidence in his proof, then his actions are declared to have fulfilled the elements of a money laundering crime.

In the evidentiary process carried out by the defendant, the defendant must be able to explain where he got his assets by including evidence explaining when, where, and how he obtained them. If the defendant cannot prove that the assets he owns did not come from a criminal act, the defendant cannot be immediately proven guilty of committing a criminal act. The reverse evidence carried out by the defendant regarding his assets only applies to one element regarding the origin of his assets.

Therefore, the public prosecutor must be able to prove all the elements of the criminal act that have been charged against the defendant, such as how the defendant placed, transferred, paid, spent, gifted or donated, entrusted, taken abroad, exchanged, or took other actions with his assets.

### **Obligations of Law Enforcement Officials to Support Reversal Evidence**

To prove the crime of money laundering, law enforcement officers carry out tracing techniques on the defendant's assets. This is considered to help prove the elements of the crime of laundering, i.e. the elements of how the defendant placed, transferred, diverted, spent, paid, donated, entrusted, took abroad, changed the form, exchanged for currency or securities, or other actions on assets that he knows or reasonably suspects are the proceeds of a criminal act.

In the case of the crime of money laundering, law enforcement officials must also pay attention to whether the defendant has fulfilled the following elements:

- a. elements of how the defendant concealed or disguised the origin, source, location, designation, transfer of rights, or actual ownership of assets that he knew or reasonably suspected were the proceeds of a criminal act.
- b. elements of how the defendant received or controlled the placement, transfer, payment, grant, donation, custody, exchange, or use of assets that he knew or reasonably suspected were the proceeds of a criminal act. Concerning assets in money laundering criminal cases, which are indicated as not following the official income profile of a state official or exceeding the salary earned, an approach can be applied through the follow-the-money method, which Ramelan defines as an approach starting from the downstream where the assets are reconstructed until upstream to find the criminal act that gave birth to the wealth.

In reverse evidence, money laundering crimes have a limited and balanced concept. This means that reverse evidence is limited to certain criminal acts, and the public prosecutor still must prove the charges presented to the defendant. Referring to this, there are two possibilities. The first possibility is that the defendant cannot prove that the origin of the assets he owns does not come from the proceeds of a crime.

Even though this only proves one element regarding the origin of his assets, it can still be an indication for the judge that the defendant's assets originate from or are the result of a criminal act. On the other hand, the second possibility is that if the defendant can prove that the origin of the assets he owns does not come from the proceeds of a criminal act, the public prosecutor still has the opportunity because he has not lost the right to prove that the assets owned by the defendant originate from a criminal act.

This means that the public prosecutor, when carrying out an indictment, must always provide himself with sufficient evidence to be able to prove his accusation. In conditions where the defendant can prove that he is innocent while the public prosecutor proves that the defendant is guilty, the judge will evaluate the evidence and facts at trial so that the judge can decide with the judge's confidence.

Based on the explanation above, according to the author, to support the process of reversing the burden of proof in the crime of money laundering, which is the result of a criminal act of corruption, law enforcement officials must be able to prove the predicate crime, separate the charges between the predicate crime and the crime of money laundering, and apply the tracing and disclosing assets method, which starts from the prosecution investigation stage to the court examination. Thus, this can make it easier for legal officials to confiscate assets obtained from criminal acts of corruption.

### **Legal Economic Perspective**

From a legal economic perspective, the application of the reversal of the burden of proof plays an important role in reducing information asymmetry between law enforcement authorities and perpetrators. In money laundering cases, perpetrators often possess more information regarding the origin of assets, making conventional proof mechanisms less effective.

By shifting part of the burden of proof to the defendant, the legal system increases efficiency in uncovering illicit assets and reduces enforcement costs. This mechanism also contributes to preventing market distortions caused by illegal financial flows, thereby supporting transparency and fairness in the economic system.

### **Business Ethics Perspective**

From a business ethics perspective, money laundering is a form of unethical conduct that violates principles of honesty, accountability, and fairness. The reintegration of illicit wealth into the legal economy creates unjust advantages and undermines ethical business competition.

The reversal of the burden of proof functions as an ethical control mechanism by requiring individuals to justify the legitimacy of their assets. This promotes responsible economic behavior and aligns with modern principles of good corporate governance, which emphasize transparency and accountability.

### **Islamic Business Ethics Perspective**

Islamic business ethics deem money laundering incompatible with *ṣidq* (honesty), *amānah* (trustworthiness), and *‘adl* (justice). Islamic teachings prohibit acquiring and using wealth from unlawful sources.

The application of the reversal of the burden of proof aligns with the objectives of *maqāṣid al-sharī‘ah*, particularly in protecting wealth (*ḥifẓ al-māl*) and preventing harm (*mafsadah*). By obligating individuals to prove the lawful origin of their assets, this mechanism supports ethical economic practices and helps maintain justice within society.

### **CONCLUSION**

The reversal of the burden of proof in money laundering crimes originating from corruption serves not only as a legal instrument but also as a strategic mechanism in maintaining economic integrity and ethical business practices. From a legal economic perspective, this mechanism enhances efficiency in law enforcement, reduces information asymmetry, and prevents market distortions.

From a business ethics perspective, it promotes accountability and discourages unethical financial behavior. Furthermore, within the framework of Islamic business ethics, the reversal of the burden of proof aligns with the principles of honesty, trustworthiness, and justice, as well as the protection of lawful wealth.

Therefore, strengthening the implementation of this mechanism is essential not only for combating money laundering but also for fostering a fair, transparent, and ethical economic system.

### **Suggestion**

In implementing the reversal of the burden of proof, qualified law enforcement officers need resources because law enforcement officers must be able to first prove the origin of the criminal act before executing to trace and verify the assets resulting from the proceeds of the crime.

### **Conflict of Interest Statement**

The authors declare that there is no conflict of interest regarding the publication of this article. This research was conducted independently without any financial, commercial, or personal relationships that could be construed as a potential conflict of interest.

### **CRedit Authorship Contribution Statement**

Author Contributions (CRedit Taxonomy)

**Agustinus Purnomo Hadi:** Conceptualization, Methodology, Writing – Original Draft.

**Arizon Mega Jaya:** Formal Analysis, Investigation, Writing – Review & Editing.

**Aristama Mega Jaya:** Data Curation, Validation, Writing – Review & Editing. All authors have read and approved the final version of the manuscript.

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The AI tools did not contribute to the core intellectual content, research design, data analysis, or interpretation of the results. All final decisions and the overall content of the manuscript remain the full responsibility of the authors.

In addition, this manuscript has been screened for similarity and AI-generated content using Turnitin to ensure academic integrity and originality.

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